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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,773	10/16/2003	Andreas Klingenberg	RW-146	9525
<div>7590 Friedrich Kueffner 317 Madison Avenue, Suite 910 New York, NY 10017</div>			<div>EXAMINER MAEWALL, SNIGDHA</div>	
			<div>ART UNIT 1615</div>	<div>PAPER NUMBER</div>
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/09/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/688,773

Applicant(s)

KLINGENBERG, ANDREAS

Examiner

Snigdha Maewall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07/31/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

1. Receipt is acknowledged for the petition for extension of time filed on 07/31/06.
2. It is noted that as of this date, no information disclosure statement is of record in this application.

Election/Restriction

3. Applicant's election of Group II, claims 7-14 in the reply filed on 07/31/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims Pending

4. Claims 7-14 are pending in the instant application. Claims 7-14 will be examined on the merits solely in regards to the elected Group II.

Claim Objections

5. Claims 7-14 are objected to because claim 7 refers to the limitations of claim 1. Examiner suggests writing claim 7 in an independent form.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 13 is drawn to a colour mixture comprising surface active substance which is either an emulsifier or a "carrier substance". In analyzing whether the written description requirement is met for genus claims, it is determined whether a representative number have been described. In the instant case, the disclosed embodiments as a "carrier substance" are polysaccharides, maltodextrins and polyhydric alcohols. Polysaccharide and polyhydric alcohol are sub-genuses and comprise several embodiments of various structures and functions. The specification only specifies sugar and maltodextrin on page 5. Therefore, applicant was not in possession of all the compounds that fall within the claimed "carrier substance" and thus lacks adequate written description.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7(which recites the limitations of claim 1 as written), 9 and 13 the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). In the instant case claim 7 inherently includes the limitations of claim 1 (as written), therefore, the phrase of claim 1 and claim 9 which include the limitation "whereby the solid is a carotenoid such as " and "instruments such as mills" in claim 1, are unclear. The limitation recited as "carotenes and carotenoids as wells as nature identical as well as of natural origin" is unclear and ambiguous. It is not clear as to what compounds the applicant is referring to under the recited category. Examiner suggests correcting the spelling of well which is written as wells currently and is thus ambiguous. Claim 13 recites the limitation "carrier substance allowed in food products or food additives such as colours" is indefinite and unclear as to what compounds constitute the carrier substance and what constitutes the colours. Claim 1 recites the limitation "surface active substance is produced". A surface active agent is a compound, what is meant by produced? The term produced is confusing and unclear as the applicant is

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referring to emulsifier as a surface active agent which is a compound. Claims 1 and 9 recite the limitation "carmine product". It is not clear as to what is meant by "product" in terms of the nature of the bonding (ionic or covalent bond) or what product is the applicant referring too.

Claim 14 contains the trademark/trade name lactem and citrem. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe lactic acid esters of monoglycerides and citric acid ester of monoglycerides and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 7-8 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Runge et al. (US 6,287,615 B1.)

Runge et al. discloses the use of solubilized carotenoid preparations for coloring foods (abstract). Various carotenoids that are disclosed as food color additives are lycopene, carotene, astaxanthine, lutein beta- carotene etc. as stated (column 2, lines, 31-46). The carotenoids are suspended in emulsifiers either in pure form or else in the form of an oily dispersion, where the dispersant is mineral or vegetable oil and preferably lecithin (column 2, lines, 44-47 and column 3, line 16). Preservatives are disclosed in (column 3, lines, 54-57 and sugars, sucrose, glucose, fructose are disclosed in column 4, lines, 1-2). The stable solubilized carotenoid preparations for food coloring and pharmaceutical preparations have particle size in the range of 10-200 nm (column 1, lines, 46-49). The burden is upon applicant to show that instant product is patentably distinct from the prior art product.

12. Claims 7-8 and 10-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Koehler et al. (US 6,500,473 B1).

Koehler et al. discloses a composition comprising coloring substance which is dispersible and is useful for the preparation of health improving products and /or coloring products for use in the coloring of edible products including food products and nutraceuticals, and for coloring of pharmaceutical products (abstract). The coloring

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substance bodies have an average largest dimension of 10 micrometer (column 2, lines, 65-67). The coloring substance is a solid pigment (column 2, lines 53-54). The coloring composition include carotenoids, curcumin, carmine, porphyrin, chlorophyll, turmeric curcuma root and polyphenols (column 4 and 5, lines , 59-65 and 10-30). The coloring substance bodies in the composition are solid particles, such as solid particles of carotenoids, carmine, curcumin and chlorophyllin 9column 6, lines 10-14). The additives as disclosed are sugar carbohydrate glucose, antioxidant and preservatives are disclosed in column 8, lines, 15-21). The burden is upon applicant to show that instant product is patentably distinct from the prior art product.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koehler et al. (US 6,500,473 B1) in view of Bunick (US PG Pub. 2003/0215585 A1).

The teachings of Koehler et al. has been discussed above. Koehler et al. does not disclose coloring agents such as riboflavin, anthocyanin and betanin.

However, Bunick discloses such coloring agents in the composition.

Bunick discloses an enrobed core such as a tablet core that has a coating made

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of one or more patterned films (abstract). The film comprises coloring agents suitable for use in pharmaceutical applications for instance, riboflavin, betanin, anthocyanin, chlorophyllin, carotenes etc. Bunick further discloses that such coatings provide visual distinctions (column 2, paragraph [0013] and discloses on page 1, paragraph [0004]) that colors have been known to provide enhanced aesthetic appeal as well as improved product identification and brand recognition by the consumers.

It would have been obvious to the one of ordinary skilled in the art at the time the invention was made to utilize various coloring agents such as riboflavin, anthocyanin and betanin as disclosed by Bunick in the compositions forwarded by Koehler et al. because such coloring agents provide enhanced aesthetic appeal to the composition. Further, since Bunick discloses that such coloring agents are pharmaceutically suitable and since Koehler teaches using the composition for pharmaceutical purposes, a skilled artisan would have been motivated to prepare a solid color composition by using coloring agents such as riboflavin, anthocyanin and betanin along with carotenes, carotenoids and copper chlorophyllin compounds with a reasonable expectation of success.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Snigdha Maewall

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